

DMR ADVISORY COUNCIL MEETING
March 30, 2004, 1:00 p.m.
Minutes

A meeting of the Department of Marine Resources' (DMR) Advisory Council (AC) was held on this date at the Department of Human Services Central Offices Conference Room, 442 Civic Center Drive, Augusta. AC members attending this meeting included **Dana Rice, Sr., (Chair), Ralph Smith, Rod Mitchell, Larry Knapp (new Lobster Advisory Council chair), Al West, David Turner, Lori Howell, Bill Sutter, Allyson Jordan and Craig Pendleton.** Council members not present included **Blair Pyne, Dana Temple, David Pecci, and Elizabeth Sheehan.** Department staff included Commissioner George Lapointe, Deputy Commissioners Lewis Flagg and David Etnier, Linda Mercer, Col. Joe Fessenden, Amy Fitzpatrick, Terry Stockwell, Deirdre Gilbert and L. Churchill. Other attendees included Mike Danforth, Scott Tilton, Susan Jones (Commercial Fisheries News), Bill Vail (Exec. Dir. Coastal Conservation Association Maine), Bud Brown (CCA), Kent Mohnkern (Yarmouth), Adam Campbell (North Haven commercial fisherman, oyster farmer), Roice White (Machias Bay Seafood), Stephen Snow, John Butler (Scarborough), Jason Joyce and Carlton Staples (Swans Island lobster fishermen).

1. Welcome

Chair Dana Rice called the meeting to order shortly after 1:00 pm. The AC members introduced themselves and welcomed the new chair of the Lobster Advisory Council, ex-officio member Larry Knapp. Pending new AC members were also introduced: Scott Tilton who will replace the seat held by Lori Howell; and Mike Danforth who will replace the seat held by Kristan Porter.

Chair Dana Rice announced that Elizabeth Sheehan has submitted a letter of resignation and requested that a thank-you letter be sent with regrets that she must resign. The chair accepted volunteers David Turner, Larry Knapp and Allyson Jordan for a new officer nominating committee. Elizabeth held the position of vice chair.

2. Approval of minutes (Handout)

Motion: (D. Turner, L. Howell) *Unanimous. Motion to approve the minutes of the meeting held January 21, 2004.*

3. Regulations - Action (voting)

Chapter 9	Harvester: Shellstock Harvesting, Handling and Sanitation (New);
Chapter 15	General Shellfish Sanitation Requirements;
Chapter 16	Uniform Physical Plant Equipment and Operation Requirements;
Chapter 17	Shucker-Packer;
Chapter 18	Shellstock Shipper;
Chapter 19	Reshipper;
Chapter 20	Depuration; and repeal of
Chapter 48	Identification and Tagging of Shellfish (Handout)

L. Churchill presented a synopsis of the changes in the handouts for Chapters 9 and 48 and 15-20.

Ralph Smith asked several questions about tags.

Chair Dana Rice asked if there would be no objection to adding the dealer's name, address and certification number on the bulk tag.

R. Smith objected to the word "dealer" on his dealer tags. He explained that there is additional language that should be added to the statement regarding the requirements to hold certain tags for 90 days. The wording "or is retagged" could be added to the tags in both Chapters 9 and 15.

Amy Fitzpatrick said she would confirm that this language is in the Model Ordinance (MO – federal rules) and if it is then the information and changes Ralph asked about could/should be added.

R. Smith presented questions on wet storage, Chapter 9.01(C), particularly regarding the purging of quahogs. As a dealer he objects to harvesters not being allowed to store harvested quahogs in their own floats to purge the sand before selling the quahogs to him as a dealer. He does not want to include the quahog harvesters under his wet storage permit because those floats would not be located in his community where he could see them. The harvesters would have to be identified in his dealer wet storage permit information/plan and he objected to this.

R. Smith objected to Canada's use of the date shellstock is taken out of wet storage instead of the date of harvest that the US requires under the MO.

R. Smith objected to wet storage being called a "process" and compared the allowance of soft shell clam harvesters to leave clams in the same [open] water that they were dug from high to low tide before picking them up, is not consistent with not allowing quahog draggers to purge [offshore] dragged quahogs in floats [near shore] to purge.

Lori Howell: Harvesters are not allowed to possess dealer tags.

Amy Fitzpatrick and L. Howell explained that the Canadian wet storage issue has to be and is being evaluated by the fed's and the Interstate Shellfish Sanitation Conference (ISSC) [A. Fitzpatrick and L. Howell are members of the ISSC].

L. Howell explained that in conversations with other dealers in recent weeks that the persons she has talked with consider the rules too accommodating to harvesters by allowing harvesters to sell directly to restaurants and that this is not being addressed in the regulations.

Commissioner Lapointe: Those are changes that would have to be addressed through legislation.

Bill Sutter: What are the interstate versus intrastate commerce consequences?

David Turner: If the regulations are not corrected [for compliance with the MO] the Food and Drug Administration (FDA) will correct us by closing Maine to interstate commerce. This will happen eventually. He said that he attended informational meetings and a hearing to learn more about these regulations, where all of these topics were discussed.

R. Smith objected to a harvester being allowed to sell to a restaurant.

L. Churchill: The statute 12 MRSA §6601 authorizes this activity in Maine and explained that the statute overrides the MO in this and would have to be changed by legislation.

R. Smith objected to harvesters being allowed to sell to non-certified dealers.

L. Howell explained that many of the changes in the regulations have to do with accommodating §6601.

Commissioner Lapointe: Those are changes that would have to be addressed through legislation.

B. Sutter asked what would be the FDA's time line [for compliance].

A. Fitzpatrick: Unknown; maybe a year. Maine has been written up [found out of compliance] three times recently.

Larry Knapp: The law says retail, does this mean restaurants?

L. Churchill: Yes. The retail seafood license statute 12 MRSA §6852 reads [in part] the holder of that license may, within state limits, buy, sell, transport, ship or serve shellstock.

B. Sutter: Some of Ralph's concerns can't be addressed and must be complied with. Some can be addressed if the laws are changed. If this is not done now Ralph may not be allowed to ship out of state.

Chair D. Rice: Should we consider each chapter separately or all chapters together?

L. Howell: It is better to consider all the chapters together as a package as they are all interrelated.

D. Turner: If voted in then the Commissioner and the Marine Patrol would have a phase in period for compliance.

Craig Pendleton: In the early days of the Portland Fish Pier if we set our totes of fish on the pier they were considered to be in my possession.

Chair D. Rice: Move on to Chapter 15.

R. Smith: Shucking shellfish is a "process" too but is allowed by the statute [12 MRSA §6601].

L. Howell: This is an example where dealers see the sanitation rules as disproportionately applied to dealers versus harvesters.

R. Smith: Objected to dealers being allowed to share facilities Chapter 15.15(H).

A. Fitzpatrick: Persons have sought monies, grants/loans, to put up a building. They may share office space but not coolers. There is no sharing of product space or placement.

L. Howell: 20 years ago the MO prohibited this. 10 years ago the ISSC changed the MO to allow this. Dealers I've heard from do not want non-residents being allowed to do this in Maine.

R. Smith: A harvester shouldn't be allowed to ship on another(s) truck, as allowed in Chapter 15.18(A). [12 MRSA §6601 allows this and would therefore have to be changed by legislation].

R. Smith: The precise location/source of where product is dug [Chapter 15.18(C)] and should be coded to allow indexing in the future.

A. Fitzpatrick: An indexing system is a goal that the Department is working towards to replace written names of locations.

L. Howell: "Precise location" is required in the MO.

D. Turner: You're not going to keep the location a secret.

R. Smith: Brokers are allowed to broker product under Chapter 15.22?

L. Howell: This is consistent with the MO and cannot be changed.

R. Smith: Why is an address required in Chapter 15.24 [Shipping Documents and Records]?

A. Fitzpatrick: The MO requires this.

R. Smith: Chapter 15.32(B), the quarterly inspection for wet storage permits is too frequent.

A. Fitzpatrick: That is a section we intended to change to yearly or 6 months and should be addressed.

L. Howell: The word "Dealer" should not have to be added to dealer tags.

R. Smith: Did the Department add the various dealer tags or are they from the MO?

A. Fitzpatrick: All the tags in these regulations are from [required by] the MO.

L. Howell: "Tags" are an item that is before the ISSC for review in the future. As a member of the ISSC Board, members such as Amy or myself may submit/request changes to the ISSC for changes in the MO.

Chair D. Rice: Move on to Chapter 16.

R. Smith: Why is the year 1989 used in Chapter 16.14?

A. Fitzpatrick/Commissioner Lapointe: 1989 is the date used in the document cited by the MO [1993 edition] that allows older equipment that has been in continuous service since prior to 1989 that may still be used.

R. Smith: How is it possible for a vehicle to have a [time temperature] recording device as required in Chapter 16.23 Vehicles?

L. Howell: This is in the MO and would have to go through the ISSC to change.

A. Fitzpatrick: This recording device is required for shipments over 4 hours and is in the MO. [Chapter 16.23(E)]

R. Smith: Chapter 16.25(B) [Shellfish Shipping Conditions] prohibits/allows what?

A. Fitzpatrick: Bait cannot be mixed with food. Food needs its own pallet.

L. Howell: Where is sewage to be disposed of as required under Chapter 16.24 Shellfish Harvester Vessels?

A. Fitzpatrick: A sewage disposal system such as in your home may be used. [Chapter 16.24(C)(d)]

Chair D. Rice: Move on to Chapter 17; no questions; move on to Chapter 18.

R. Smith: The ability to harvest is missing in Chapter 18.02 for Shellstock Shippers.

L. Howell: Shellstock Shippers may not harvest under the MO.

Chair D. Rice: Move on to Chapter 19

R. Smith: Same question; same clarification from L. Howell.

Chair D. Rice: Move on to Chapter 20

L. Howell: Representing the only depuration plant owner in Maine she indicated that she was ok with the proposed rules in Chapter 20. She met with the Department to discuss this chapter early during the informational meetings held last year.

Motion: (R. Smith – 1st, L. Howell – 2nd) To not accept as written.

Discussion:

R. Smith opposes the rules that do not allow quahog harvesters to purge.

L. Howell: The Department should not be allowed to remove Chapter 15.32(B). Wet storage and harvester sales should be reconsidered and tabled to a working group.

Comm. Lapointe: All of the proposed regulations or just these issues?

R. Smith: It shouldn't be necessary to go back to public hearings on just these critical issues.

Comm. Lapointe: Is there a plan B?

A. Fitzpatrick: There is no back up plan for noncompliance with the MO/federal rules.

B. Sutter: There have been many issues contrary to the MO that must go to the Legislature also.

Al West: There should be discussions on enforcement with the FDA. When formerly in that business we worked with the feds about processing and washing mussels. There may be an area that could be ok'd for beaching/loading the mussels, need to ask. Mussels on the wharf versus being in the bay during the higher temperatures in August could be discussed with FDA.

D. Turner: From what was said at the meetings and hearings the issues about wet storage of quahogs was taken up through channels to the FDA in Washington and the rules have been determined to be correct.

L. Howell: The quahogs harvesters are looking for [permission] to "process".

Col. Fessenden: These shellfish regulations are confusing and subject to interpretation. The Marine Patrol works with Public Health personnel. Marine Patrol uses a lot of discretion. If the 90-day can be changed why not fudge the wet storage rules with the committee too?

[The 90-day tag language is in the MO. Wet storage by harvesters is not permitted in the MO.]

R. Smith: One real issue is tagging, another is wet storage, which are both throughout the regulations. There are only [these] 2 basic issues. Take up at another meeting.

L. Churchill: 120 day legal window to work in from the close of the comment period on February 23.

Comm. Lapointe: Table until May meeting?

Chair: We have a motion on the floor to not accept and a suggestion to table this until the May meeting.

Motion continued:

Lori Howell continued: Substitute motion to table till the May meeting and convene a committee on wet storage and harvester sales.

Ralph Smith continued: If the Department will clarify these items then withdraw the first motion and accept the substitute motion by Lori Howell.

Lori Howell continued: agrees to withdraw her second to the first motion.

The Council voted to table the shellfish sanitation rulemaking items till the May meeting and convene a committee on wet storage and harvester sales.

Approved: R. Smith, R. Mitchell, L. Knapp, A. West, L. Howell, B. Sutter, A. Jordan, C. Pendleton, D. Rice

Opposed: D. Turner

D. Turner: These issues will not be resolved within a few months and this jeopardizes a lot of work. A decision can be made today and move on.

Col. Fessenden: I don't agree with the definition of wet storage.

Comm. Lapointe: We will meet to clarify these issues and confirm what may be legally done with the Attorney General's Office. We may have the same answers in 2 months.

4. Other Business

DMR Draft Long Range Plan

Commissioner Lapointe gave a power point presentation on the Department's draft long range planning. A hard copy will be mailed to the AC members. Discussion topics: finding sources/ideas; transparency issues with meetings; starting with small groups first.

Chapter 10.04 Method of taking Surf, Hen Clams or Quahogs in Saco Bay
AC member discussion topics:

Craig Pendleton: pollution closures; food resource vs bait; stock assessment needed; North Atlantic Marine Alliance (NAMA) is interested in helping with a partnership with the Northeast Consortium; conservation should come first; the recreational resource accessed on spring (large) tides should be considered; it is a small area; larger catch vs quality; potentially a good side fishery.

Comm. Lapointe will contact the Mid Atlantic States Marine Fisheries Council (MASMFC) on the status of surf clams included in the quahog management plan.

Linda Mercer: The pollution reclassification procedures or process would have to be confirmed with Amy Fitzpatrick. At least a years worth of samples is required for reclass and ocean out falls are another process to reclass.

Mike Danforth: Surf clams fall under the MASMFC management plan. You may not want to open the ITQ's and ownership issues in this plan as they may be pushed out of their own fishery.

R. Smith: Then they should seek a federal experimental permit.

Comm. Lapointe: That is the problem with the MASMFC Mahogany quahog plan; we ended up with a cap of 100,000-bushels.

A. Jordan: Without the science/stock assessment to back up this fishery you may not be allowed to have this fishery. Need to act.

C. Pendleton: Should look at the long-term impact study of Camp Ellis. When working with the scallop enhancement work we found dead zones; collected samples of scallops and have films from dives from Goosefair Brook to the Brunswick Motel at Old Orchard Beach.

B. Sutter: How much Department effort being drawn off on other work for small fisheries?

Comm. Lapointe: Without funding, none.

B. Sutter: The Department should prioritize for the size of the fishery participants.

Chair D. Rice opened the floor for input from the audience.

John Butler described his participation and the history and development of this fishery. In his opinion the dredging is not likely harming seed clams. The small seed clam will drop out and reseed. Suggest a recreational license if there are a 1,000 recreational users. Apply the dredge size to the opening or use quotas. A 24-inch cutter bar will catch the same as a 36-inch bar it just takes longer. The bait clam industry was not profitable. Only processors in Massachusetts want this product.

Kent Mohnkern expressed concern for protection of the recreational users; shouldn't be fished as bait.

Bill Vail – Exec. Dir. CCA Maine: Dave Pecci's letter is consistent with CCA's position and pleased to hear Craig Pendleton acknowledge the recreational component. To the Commissioner, do we need an assessment?

Comm. Lapointe: Yes, we need to know the extent of the resource and hope that you will come back to discuss this.

Mike Danforth: Surf clams are regulated with quahogs and without the feds giving Maine an inshore quota they shouldn't be fished.

Linda Mercer: The feds receive our landings data and it is no secret to them.

Comm. Lapointe: If there is a planned expansion, for example to increase the 100,000-bushels on quahogs, we've promised and need a stock assessment first, which hasn't happened.

B. Sutter: The Department should settle the permit question before pursuing an assessment.

C. Pendleton: This is about planning, staying a step ahead without just jumping in to this.

Steve Snow described his participation and history of this fishery. There are no local markets. The dredging doesn't have to be damaging and if it is then it is operator error. Should repeal the 24-inch restriction and use 36 inches instead. The 24-inch rule was a knee jerk reaction to larger boats.

John Butler passed photos around of the dredges used.

R. Smith: Is there room for increased pressure?

S. Snow: Yes.

R. Smith: If the dredges are putting the small ones back then it is like quahogs which means a wet 3 foot dredge is better than a dry 2 foot dredge.

S. Snow: The feds visited us last year.

Chair D. Rice: This will continue to be discussed. Move to next topic.

Advisory Council member updates

Comm. Lapointe discussed with the members the status of Amendment 13.

Dep. Comm. Lew Flagg review his council highlights. See handout.

Lori Howell announced this was her last meeting and acknowledged her well wishes to those she has worked with.

The next scheduled meeting is Wednesday, April 21, 2004.

Motion: (A. Jordan, L. Howell) Unanimous. *The Council voted to adjourn.*